

# **EXHIBIT B**

ORIGINAL

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

In re: INACOM CORP., et al.,

-----x  
INACOM CORP., on behalf of all  
affiliated Debtors,

Plaintiff,

-against-

TECH DATA CORP.,

Defendant.

Civ Act No.

04-148 GMS

Adversary No.

02-03496 PJW

-----x  
INACOM CORP., on behalf of all  
affiliated Debtors,

Plaintiff,

-against-

DELL COMPUTER CORPORATION,

Defendant.

Civ Act No.

04-582 GMS

Adversary No.

02-03499 PJW

-----x  
INACOM CORP., on behalf of all  
affiliated Debtors,

Plaintiff,

-against-

LEXMARK INTERNATIONAL, INC.,

Defendant.

Civ Act No.

04-583 GMS

Adversary No.

02-03500 PJW

-----x  
INACOM CORP., on behalf of all  
affiliated Debtors,

Plaintiff,

-against-

INGRAM ENTERTAINMENT, INC.,

successor in interest to

NASHVILLE COMPUTER LIQUIDATORS,

Defendant.

Civ Act No.

04-593 GMS

Adversary No.

02-03960 PJW

July 28, 2005

9:11 a.m.

Deposition of JASON FENSTERSTOCK

**Computer Reporting Incorporated**

CRI

501 Fifth Avenue New York, NY 10017  
(212) 986-1344 Fax (212) 983-9149 www.crinyc.com

July 28, 2005

9:11 a.m.

Deposition of JASON FENSTERSTOCK,  
held at the offices of Pachulski Stang Ziehl  
Young Jones & Weintraub, 780 Third Avenue,  
New York, New York, pursuant to Agreement,  
before John Ianno, Jr., a Notary Public of  
the State of New York.

A P P E A R A N C E S:

PACHULSKI STANG ZIEHL YOUNG

JONES & WEINTRAUB

Attorneys for Plaintiff

10100 Santa Monica Blvd.

Los Angeles, California 90067-4100

BY: ANDREW W. CAINE, ESQ.,

of Counsel

ADORNO & YOSS, LLP

Attorneys for Tech Data Corp.

350 East Las Olas Boulevard

Ft. Lauderdale, Florida 33301

BY: STEPHEN HUNT, ESQ., (By Telephone)

of Counsel

A P P E A R A N C E S: (Cont'd):

HUGHES LUCE LLP

Attorneys for Dell Computer Corp.

111 Congress Avenue Suite 900

Austin, Texas 78701

BY: H. ROBERT POWELL, ESQ.,

SABRINA L. STRUESAND, ESQ.,

of Counsel

STOLL KEENON & PARK LLP

Attorneys for Lexmark International

400 West Market Street

Louisville, Kentucky 40202-3377

BY: CULVER V. HALLIDAY, ESQ.,

of Counsel

A P P E A R A N C E S: (Cont'd):

SHEPPARD MULLIN RICHTER & HAMPTON LLP

Attorneys for Ingram Entertainment

650 Town Center Drive 4th Floor

Costa Mesa, California 92626-1993

BY: JONATHAN P. HERSEY, ESQ.,

of Counsel

BLANK ROME LLP

Attorneys for Executive Sounding Board

One Logan Square

Philadelphia, Pennsylvania 19103-6998

BY: EARL M. FORTE, ESQ.,

of Counsel

ALSO PRESENT:

DEAN VOMERO

RICHARD A. WHALEN

1 **J. Fensterstock**

2 items 1, 2, 3 and 4, thereafter, an accurate  
3 statement of matters for which you have been  
4 engaged?

09:30:18 5 A. Yes.

6 Q. Other than the review of the discovery  
7 information about which you have also told me, are  
8 there any other activities for which you have been  
9 engaged?

09:30:37 10 A. All activities that were required in  
11 order for us to fulfill the engagement as set  
12 forth on page 3.

13 Q. Any other matters?

14 A. No.

09:30:52 15 Q. Who decided the scope of the  
16 engagement?

17 A. Conversation between me, and counsel.

18 Q. At any time since you became engaged  
19 in this matter, have you read any legal decisions  
09:31:15 20 with respect to solvency determination in  
21 preference cases?

22 A. Yes.

23 Q. Do you recall the names of any of  
24 those legal decisions?

09:31:30 25 A. Among others, TWA, and Lids, L I D S.

1 **J. Fensterstock**

2 Q. Did you read more than one TWA  
3 decision?

4 A. I believe so.

09:32:08 5 Q. Any other court decisions regarding  
6 insolvency determinations in preference actions  
7 that you recall reading during the course of this  
8 engagement?

9 A. Not at this time.

09:32:26 10 Q. Referring back to page 3 of Exhibit 1,  
11 and the first bullet point that we discussed, do  
12 you intend to offer opinions on any other topics  
13 or issues other than those identified here?

14 A. Not to my knowledge.

09:32:46 15 Q. Do you intend to offer any opinions in  
16 this matter, other than those stated in the  
17 reports marked as Exhibits 1, 2 and 3?

18 A. Not to my knowledge.

19 Q. Exhibit 1, your May 2nd report, is  
09:33:31 20 issued by Duff & Phelps and Sasco Hill Advisors;  
21 correct?

22 A. Yes.

23 Q. Why is that? Why are both firms  
24 involved?

09:33:48 25 A. When I made the determination to move



1 **J. Fensterstock**

2 beyond Duff & Phelps, I advised the client that  
3 that was about to occur, discussed with the  
4 clients the obvious options, whether I would do  
09:34:03 5 the work on my own, whether I would continue to  
6 work with a selected team at Duff & Phelps.

7 We determined that the work, as a  
8 devoted service person, that the work would be  
9 best handled, and be the best that it could be,  
09:34:24 10 combining the forces of Duff & Phelps and Sasco  
11 Hill Advisors.

12 Q. After you left Duff & Phelps, who was  
13 the primary person on this engagement for Duff &  
14 Phelps?

09:34:48 15 A. Richard Whalen.

16 Q. Were there any other Duff & Phelps  
17 personnel working on this engagement with  
18 Mr. Whalen?

19 A. Yes.

09:35:05 20 Q. Do you recall their names?

21 A. The ones I currently recall are  
22 Matthew Miller and Jonathan Cooper.

23 Q. Are they still at Duff & Phelps to  
24 your knowledge?

09:35:17 25 A. To my knowledge, yes.

1 **J. Fensterstock**

2 Q. What are their positions at Duff &  
3 Phelps?

4 A. Associates and/or analysts.

09:35:35 5 Q. Exhibit 2, which is a May 27 report,  
6 is issued only in the name of Sasco Hill Advisors;  
7 correct?

8 A. Yes.

9 Q. Did anybody from Duff & Phelps do work  
09:36:12 10 on Exhibit 2?

11 A. The individuals at Duff & Phelps were  
12 aware of all of the contents of Exhibit 2. I did  
13 the work, prepared the report, and signed it.

14 Q. The June 21st report, Exhibit 3, is  
09:36:53 15 also issued only in the name of Sasco Hill  
16 Advisors; correct?

17 A. Yes.

18 Q. Did anyone from Duff & Phelps assist  
19 in your preparation of this report?

09:37:02 20 A. Same answer.

21 Q. What, if anything, did anyone from  
22 Duff & Phelps do to assist you in the preparation  
23 of this report?

24 A. In formulating my opinions, in  
09:37:22 25 connection with the creation of this report, I

1 **J. Fensterstock**

2 discussed my thinking, and the bases therefore,  
3 with those parties at Duff & Phelps, prior to  
4 issuing the report, and signing it myself.

09:37:51 5 Q. Did you discuss the contents of your  
6 June 21 report, Exhibit 3, with anyone from Duff  
7 other than Mr. Whalen?

8 A. I believe so.

9 Q. Who did you discuss it with?

09:38:07 10 A. Included in the discussions were Matt  
11 Miller, of Duff & Phelps.

12 Q. With respect to Exhibit 2, your May 27  
13 report, who at Duff did you converse with, prior  
14 to the issuance of that report, regarding the  
09:38:34 15 subject of that report?

16 A. Included in the discussions were Rich  
17 Whalen and Matt Miller. Possibly others, but  
18 primarily those two, to my current recollection.

19 Q. Is it fair to say that with respect to  
09:39:00 20 Exhibit 1, your initial report, both you and  
21 Mr. Whalen were involved in its preparation?

22 A. Yes.

23 Q. I'd like to explore a little bit more  
24 your respective roles with respect to the  
09:39:15 25 preparation of that report, and I'd like to start

1 **J. Fensterstock**

2 with you.

3 Can you tell me what your role was in  
4 the preparation of this report.

09:39:40 5 A. Together with Mr. Whalen, we created  
6 the structure of the report, which is where you  
7 start. How were we going to provide the analyses  
8 which would be responsive to the engagement  
9 mission. What would be included in those

09:40:04 10 analyses, the time frame for those analyses, and  
11 how the work that would be done, either the  
12 writing of the report itself, or the financial  
13 analyses and research, whose responsibility would  
14 be primarily for each, and then we would review  
09:40:26 15 the overall report together, in an iterative  
16 process, until we were both satisfied with its  
17 content, and its conclusions and offerings.

18 Q. After those conversations, what role  
19 did you assume with respect to the preparation of  
09:40:48 20 this report?

21 A. Iterative editing, iterative  
22 questioning with respect to all analyses, close  
23 attention to calculation, and I fess up, I missed  
24 one, definitely advocate to analyses done by other  
09:41:17 25 parties at Duff & Phelps, weighing approaches and

1 **J. Fensterstock**

2 thinking with Rich Whalen on issues, among others.

3 Q. Did you personally perform any of the  
4 tasks connected with the discounted cash flow  
09:41:41 5 analysis?

6 A. Yes.

7 Q. What tasks were you involved with?

8 A. Review of the discounted cash flow  
9 analysis, review of the weighted average cost of  
09:41:58 10 capital calculation, review of the Excel  
11 spreadsheets, checking numbers, the way  
12 professionals like I do, with back of the envelope  
13 checks, to see that the numbers make sense from an  
14 overall point of view, reviewing of the base data  
09:42:25 15 to that data which was included in the Excel  
16 spreadsheet that comprised the DCF analysis.

17 Q. Did you, in the course of the tasks  
18 you just described, review any of the source  
19 documents?

09:42:49 20 A. All of the source documents relative  
21 to the discounted cash flow analysis, I located  
22 through the discovery process, and provided to  
23 Duff & Phelps personnel, and reviewed those  
24 documents and the data in those documents for the  
09:43:23 25 normal processes of review that one includes in a

1 **J. Fensterstock**

2 DCF analysis.

3 Q. In the course of that review, did you  
4 select any of the numbers used from those source  
09:43:43 5 documents in the DCF analysis?

6 A. I'm not sure I understand your  
7 question.

8 Q. Okay. Dollar amounts, in various  
9 categories, were taken from source documents in  
09:44:10 10 order to be used in your discounted cash flow  
11 analysis, correct?

12 A. Yes.

13 Q. Did you personally select any of the  
14 dollar amounts from the source documents, that  
09:44:19 15 were to be used in the DCF analysis?

16 A. No, I reviewed what was selected by  
17 others.

18 Q. Did you have any personal involvement  
19 in the comparable company analysis that is set  
09:44:37 20 forth in your May 2 report?

21 A. Yes.

22 Q. What was your involvement in that  
23 regard?

24 A. Through the discovery process, I  
09:44:50 25 identified, through I think thousands and

1 **J. Fensterstock**

2 thousands of pages, that there were a number of  
3 entities that had looked at Inacom industry.  
4 These entities included -- not in any particular  
09:45:10 5 order, Compac, Goldman Sachs, Greenhill, Houlahan,  
6 Lokey, Deutsche Bank, and in the context of the  
7 Houlahan, Lokey work, there were independent,  
8 third party broker firm reports that were referred  
9 to in the Houlahan, Lokey work. I reviewed all of  
09:45:32 10 those, and I selected the universe of comparable  
11 companies that I saw Goldman Sachs looking at,  
12 Deutsche Bank looking at, Greenhill looking at,  
13 Houlahan, Lokey looking at, and some of the other  
14 brokerage firms looking at, and I provided that  
09:45:55 15 full universe to Duff & Phelps as the beginning  
16 base of their comparable company analysis.

17 Q. Did you perform any other tasks with  
18 respect to the comparable company analysis?

19 A. Yes.

09:46:20 20 Q. What other tasks?

21 A. I helped Duff & Phelps advise and  
22 clarify on the procedure that they would follow to  
23 reach the list of comparable companies that would  
24 be included in our report, dated May 2nd.

09:46:40 25 The younger persons on the Duff &

1 **J. Fensterstock**

2 Phelps team were to take that full universe that I  
3 just mentioned, review it, look at all other  
4 companies that in their independent judgment, they  
09:46:56 5 would, in the normal course, have included in an  
6 overall universe of comparable companies for  
7 Inacom, as of the valuation date, and then when  
8 that large list had been compiled, they would  
9 then, pursuant to normal Duff & Phelps comparable  
09:47:16 10 company procedures, winnow down the larger list to  
11 the best list of comps, comparable companies that  
12 they could arrive at.

13 As they did that work, the list became  
14 smaller, and when it became smaller, during the  
09:47:35 15 process of it becoming smaller, we reviewed why  
16 companies were being excluded, why companies were  
17 going to be included, and finally came to a list  
18 of what I believe is eight companies for our  
19 report. That was an iterative process involving  
09:47:50 20 at least four different minds.

21 Q. Did you personally have any role with  
22 respect to the comparable company analysis after  
23 those eight companies were selected?

24 A. Could you be more specific, please?

09:48:12 25 Q. With respect to the analyses that were



1 **J. Fensterstock**

2 conducted, as described in the comparable company  
3 analysis in your May 2 report, did you have any  
4 personal involvement with any analyses performed  
09:48:26 5 after the eight companies were selected?

6 A. The eight companies, you may have it  
7 backwards or I may be misinterpreting you. I  
8 apologize if I am. The eight companies were  
9 selected after the analyses were done. After the  
09:48:45 10 analyses of each company was done, after the  
11 analysis for each company was done, the companies  
12 were selected.

13 So when they were selected, all that  
14 remained was to take existing analysis and conform  
09:49:04 15 it to a presentation.

16 Q. Did you have any involvement with  
17 respect to that?

18 A. Yes.

19 Q. What was the nature of your  
09:49:21 20 involvement?

21 A. One item which we created late in the  
22 program, as a check to all of our other work, was  
23 to add a gross margin analysis to the overall  
24 analysis.

09:49:59 25 Q. Why did you do so?

1 **J. Fensterstock**

2 M&A transactions list, once you identify the  
3 industry and SIC codes that you are looking for,  
4 and the time frame, it is a computer run out of  
09:56:23 5 databases, with standard information that is  
6 provided out of the those databases for -- that is  
7 used in investment banking circles and valuation  
8 circles, and therefore it is really a reporting of  
9 data and much less -- it is really reporting of  
09:56:52 10 data, requires less thorough analysis than the  
11 discounted cash flow analysis or the comparable  
12 company analysis.

13 Q. Did you have any role in the  
14 comparable transaction analysis?

09:57:08 15 A. Only to review it, and to make sure  
16 that the universe that was being focused on,  
17 relative to the Inacom service business, was the  
18 universe that I would have focused on.

19 Q. Did you make any changes to that  
09:57:23 20 universe, through your review?

21 A. Did not have to.

22 Q. Who was primarily responsible for the  
23 comparable transaction analysis?

24 A. The Duff & Phelps side of the  
09:57:35 25 equation.

1 **J. Fensterstock**

2 Q. Was Mr. Whalen ultimately responsible  
3 at Duff & Phelps for that analysis?

4 A. Yes.

09:57:42 5 Q. Do you intend, at trial, to offer  
6 opinions with respect to all of the analyses in  
7 the May 2 report?

8 A. I suspect so, that's conjecture, since  
9 I suspect you are going to capitulate before  
09:58:16 10 trial.

11 Q. Let me ask it a different way then,  
12 and I always appreciate humor, believe me.

13 A. Forgive me for that indulgence.

14 Q. No forgiveness required. Assuming  
09:58:34 15 this matter proceeds to trial, do you expect to  
16 offer opinions with respect to all of these  
17 analyses in the May 2nd report?

18 A. Yes.

19 Q. To your knowledge, does Mr. Whalen  
09:58:52 20 hold any opinions with respect to the May 2  
21 report?

22 A. Yes.

23 Q. Does he hold any opinions different  
24 than yours?

09:58:59 25 A. Not to my knowledge.

C E R T I F I C A T E

STATE OF NEW YORK     )  
                                  : ss.  
COUNTY OF NEW YORK    )

I, JOHN IANNO, JR., a Shorthand Reporter and a Notary Public within and for the State of New York, do hereby certify that the foregoing deposition of JASON FENSTERSTOCK was taken before me on the 28th day of July, 2005;

That the said witness was duly sworn before the commencement of his testimony; that the said testimony was taken stenographically by me and then transcribed.

I further certify that I am not related by blood or marriage to any of the parties to this action or interested directly or indirectly in the matter in controversy; nor am I in the employ of any of the counsel in this action.

IN WITNESS WHEREOF, I have hereunto set my hand this 11th day of August, 2005.

  
JOHN IANNO, JR.

July 28, 2005

I N D E X

<u>WITNESS</u>	<u>EXAMINATION BY</u>	<u>PAGE</u>
JASON FENSTERSTOCK	MR. CAINE	6
	MR. FORTE	201

----- INFORMATION REQUESTS -----

DIRECTIONS (DI):	None
INSERT:	None
RULINGS (RL):	None
REQUESTS (RQ):	None
CERTIFIED (CE):	None
MOTIONS (MO):	None

E X H I B I T S

Plaintiff's Exhibits	For ID
1 through 8, expert reports and related documents	6
9, copy of Murray Devine report	205

17:16:19